

#### § 1467.4

#### 7 CFR Ch. XIV (1-1-05 Edition)

(1) Has a predominance of hydric soils;

(2) Is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and

(3) Does support a prevalence of such vegetation under normal circumstances. For purposes of WRP, wetland shall also refer to adjacent lands that contribute to wetland functions and values.

*Wetland functions and values* means the hydrological and biological characteristics of wetlands and the socioeconomic value placed upon these characteristics, including:

(1) Habitat for migratory birds and other wildlife, in particular at risk species;

(2) Protection and improvement of water quality;

(3) Attenuation of water flows due to flood;

(4) The recharge of ground water;

(5) Protection and enhancement of open space and aesthetic quality;

(6) Protection of flora and fauna which contributes to the Nation's natural heritage; and

(7) Contribution to educational and scientific scholarship.

*Wetland restoration* means the rehabilitation of degraded or lost habitat in a manner such that:

(1) The original vegetation community and hydrology are, to the extent practical, re-established; or

(2) A community different from what likely existed prior to degradation of the site is established. The hydrology and native self-sustaining vegetation being established will substantially replace original habitat functions and values but does not involve more than 30 percent of the wetland restoration area.

*WRP* means the Wetlands Reserve Program.

*WRPO* means the Wetlands Reserve Plan of Operations.

[60 FR 28514, June 1, 1995; 60 FR 33034, June 26, 1995. Redesignated and amended at 61 FR 42141, Aug. 14, 1996]

#### § 1467.4 Program requirements.

(a) *General.* Under the WRP, the Department may purchase conservation easements from, or enter into restoration cost-share agreements with, eligible landowners who voluntarily cooperate in the restoration and protection of wetlands and associated lands. To participate in WRP, a landowner will agree to the implementation of a Wetlands Reserve Plan of Operations (WRPO), the effect of which is to restore, protect, enhance, maintain, and manage the hydrologic conditions of inundation or saturation of the soil, native vegetation, and natural topography of eligible lands. The Department may provide cost-share assistance for the activities that promote the restoration, protection, enhancement, maintenance, and management of wetland functions and values. Specific restoration, protection, enhancement, maintenance, and management actions may be undertaken by the landowner or other Department designee.

(b) *Acreage limitations.* (1) Except for areas devoted to windbreaks or shelterbelts after November 28, 1990, no more than 25 percent of the total cropland in any county, as determined by the Farm Service Agency, may be enrolled in the CRP and the WRP, and no more than 10 percent of the total cropland in the county may be subject to an easement acquired under the CRP and the WRP.

(2) The Department and the Farm Service Agency shall concur before a waiver of either the 25 percent limit or the 10 percent limit of this subsection can be approved for an easement proposed for enrollment in the WRP. Such a waiver will only be approved if it will not adversely affect the local economy, and operators in the county are having difficulties complying with the conservation plans implemented under 16 U.S.C. 3812.

(c) *Landowner eligibility.* The Department may determine that a person is not eligible to participate in the WRP or receive any WRP payment because the person did not comply with the provisions of 7 CFR part 12. To be eligible to enroll an easement in the WRP, a person must:

(1) Be the landowner of eligible land for which enrollment is sought;

(2) Have been the landowner of such land for the 12 months prior to the time the intention to participate is declared unless it is determined by the State Conservationist that the land was acquired by will or success as a result of the death of the previous landowner, the ownership change occurred due to foreclosure on the land and the owner of the land immediately before the foreclosure exercises a right of redemption from the mortgage holder in accordance with State law, or that adequate assurances have been presented to the State Conservationist that the new landowner of such land did not acquire such land for the purpose of placing it in the WRP; and

(3) Agree to provide such information to the Department as the agency deems necessary or desirable to assist in its determination of eligibility for program benefits and for other program implementation purposes.

(d) *Eligible land.* (1) The Department shall determine whether land is eligible for enrollment and whether, once found eligible, the lands may be included in the program based on the likelihood of successful restoration of wetland functions and values when considering the cost of acquiring the easement and restoration, protection, enhancement, maintenance, and management costs.

(2) Land shall only be considered eligible for enrollment in the WRP if the Department determines, in consultation with the U.S. Fish and Wildlife Service, that:

(i) Such land maximizes wildlife benefits and wetland values and functions;

(ii) The likelihood of the successful restoration of such land and the resultant wetland values merit inclusion of such land in the program, taking into consideration the cost of such restoration; and

(iii) Such land meets the criteria of paragraph (d)(3) of this section.

(3) The following land may be eligible for enrollment in the WRP, which land may be identified by the Department pursuant to regulations and implementing policies pertaining to wetland conservation found at 7 CFR part 12, as:

(i) Wetlands farmed under natural conditions, farmed wetlands, prior converted cropland, commenced conversion wetlands, farmed wetland pastures, and lands substantially altered by flooding so as to develop wetland functions and values;

(ii) Former or degraded wetlands that occur on lands that have been used or are currently being used for the production of food and fiber, including rangeland and forest production lands, where the hydrology has been significantly degraded or modified and will be substantially restored;

(iii) Riparian areas along streams or other waterways that link or, after restoring the riparian area, will link wetlands which are protected by an easement or other device or circumstance that achieves the same objectives as an easement;

(iv) Land adjacent to the restored wetland which would contribute significantly to wetland functions and values including buffer areas, wetland creations, and non-cropped natural wetlands, but not more than the State Conservationist, in consultation with the State Technical Committee, determines is necessary for such contribution;

(v) Other wetlands that would not otherwise be eligible but would significantly add to the wetland functions and values; and

(vi) Wetlands that have been restored under a private, State, or Federal restoration program with an easement or deed restriction with a duration of less than 30 years.

(4) To be enrolled in the program, eligible land must be configured in a size and with boundaries that allow for the efficient management of the area for easement purposes and otherwise promote and enhance program objectives.

(e) *Ineligible land.* The following land is not eligible for enrollment in the WRP:

(1) Converted wetlands if the conversion was commenced after December 23, 1985;

(2) Land that contains timber stands established under a CRP contract or pasture land established to trees under a CRP contract.

(3) Lands owned by an agency of the United States;

(4) Land subject to an easement or deed restriction with a duration of 30 years or more prohibiting the production of agricultural commodities; and,

(5) Lands where implementation of restoration practices would be futile due to on-site or off-site conditions.

(f) *Enrollment of CRP lands.* Land subject to an existing CRP contract may be enrolled into the WRP only if the land and landowner meet the requirements of this part, and the enrollment is requested by the landowner and agreed to by the Department. To enroll in WRP, the CRP contract for the property shall be terminated or otherwise modified subject to such terms and conditions as are mutually agreed upon by the Farm Service Agency and the landowner.

[60 FR 28514, June 1, 1995; 60 FR 33034, June 26, 1995. Redesignated and amended at 61 FR 42141, Aug. 14, 1996; 67 FR 39255, June 7, 2002]

**§ 1467.5 Application procedures.**

(a) *Application for participation.* To apply for enrollment, a landowner must submit an Application for Participation in the WRP. The application must be submitted during an announced period for such submissions.

(b) *Preliminary agency actions.* By filing an Application for Participation, the landowner consents to a Department representative entering upon the land for purposes of assessing the wetland functions and values, and for other activities such as the development of the preliminary WRPO that are necessary or desirable for the Department to make offers of enrollment. The landowner is entitled to accompany a Department representative on any site visits.

(c) *Voluntary reduction in compensation.* In order to enhance the probability of enrollment in WRP, a landowner may voluntarily offer to accept a lesser payment than is being offered by the Department.

[60 FR 28514, June 1, 1995. Redesignated and amended at 61 FR 42141, 42143, Aug. 14, 1996]

**§ 1467.6 Establishing priority for enrollment of properties in WRP.**

(a) The Department shall place priority on the enrollment of those lands that will maximize wildlife values (especially related to enhancing habitat

for migratory birds and other wildlife); have the least likelihood of re-conversion and loss of these wildlife values at the end of the WRP enrollment period; and that involve State, local, or other partnership matching funds and participation.

(b) *Ranking considerations.* Based on applications for participation, the State Conservationist, in consultation with the U.S. Fish and Wildlife Service and the State Technical Committee, will rank properties based on: estimated costs of restoration and easement acquisition, availability of matching funds, significance of wetland functions and values, estimated success of restoration measures, and the duration of a proposed easement with permanent easements being given priority over non-permanent easements.

(c) The Department may place higher priority on certain geographic regions of the State where restoration of wetlands may better achieve Department State and regional goals and objectives.

(d) Notwithstanding any limitation of this part, the State Conservationist may enroll eligible lands at any time in order to encompass total wetland areas subject to multiple ownership or otherwise to achieve program objectives. Similarly, the State Conservationist may, at any time, exclude otherwise eligible lands if the participation of the adjacent landowners is essential to the successful restoration of the wetlands and those adjacent landowners are unwilling to participate.

[60 FR 28514, June 1, 1995. Redesignated and amended at 61 FR 42141, 42142, Aug. 14, 1996]

**§ 1467.7 Enrollment of easements.**

(a) *Offers of enrollment.* Based on the priority ranking, the Department will notify an affected landowner of tentative acceptance into the program for which the landowner has 15 calendar days to sign a letter of intent to continue. Department will select lands to maximize environmental benefits per expenditure of Federal funds.

(b) *Effect of letter of intent to continue (enrollment).* An offer of tentative acceptance into the program does not bind the Department or the United States to acquire an easement, nor